



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2005

Ms. Lillian Guillen Graham  
Assistant City Attorney  
City of Mesquite  
P. O. Box 850137  
Mesquite, Texas 75185-0137

OR2005-04656

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225377.

The Mesquite Police Department (the "department") received a request for complete records, calls, and reports related to a specified address since 1999. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201. We find that the submitted documents in Exhibit 2 relate to a report of alleged child abuse. *See* Fam. Code § 261.001 (defining “abuse” for purposes of Family Code, ch. 261); *see also* Fam. Code § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, this information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that these records are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You contend that a portion of the submitted information in Exhibit 3 is confidential under section 772.118 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts and section 772.118 applies only to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). Section 772.118 makes confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier. *See id.* at 2. You represent that the City of Mesquite is part of an emergency communication district that was established under section 772.118. We have marked the information in Exhibit 3 that is not confidential under section 772.118. The department must withhold the remaining section 772.118 information it has identified.<sup>1</sup>

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental, *see* Open Records

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<sup>1</sup> Because we reach this conclusion, we do not address your argument that this information is also confidential under section 771.061(a) of the Health and Safety Code.

Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common law privacy). We have marked for release information identified by the department that is not protected by the doctrine of common law privacy. The department must withhold the remaining private information it has identified in Exhibit 3 pursuant to section 552.101 in conjunction with common law privacy.

Section 552.101 also encompasses information made confidential by federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in Exhibit 3 are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, you should ensure that no such information is obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you contend that portions of Exhibit 3 are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the marked Texas motor vehicle record information in Exhibit 3. *See* Gov’t Code § 552.130.

In summary, Exhibit 2 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Unless otherwise noted, the marked telephone numbers and addresses of 9-1-1 callers contained in Exhibit 3 must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. Unless otherwise noted, the marked medical and personal financial information in Exhibit 3 must be withheld under section 552.101 of the Government Code in conjunction with the doctrine of common law privacy. The marked Texas motor vehicle record information in Exhibit 3 must be withheld pursuant to section 552.130 of the Government Code. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/jev

Ref: ID# 225377

Enc. Submitted documents

c: Mr. Matt McCamant  
2924 White Oak Lane  
Bedford, Texas 76021  
(w/o enclosures)